

### **Remarks**

After careful consideration of the outstanding Office Action, this application has been amended accordingly, and favorable reconsideration on the merits thereof is at this time respectfully requested.

For the record, in the first Office Action of June 16, 2005, the Examiner stated that claims in the application were directed to three "patentably distinct species," and the same were identified as "Species 1, Figures 1-9," "Species 2, Figures 10-11," and "Species 3, Figures 12-14."

The undersigned elected, absent traverse, Species 1 of Figures 1-9 in the Amendment/Response certificate of mailed on July 8, 2005. The undersigned stated: "claims 1 through 22 and 27 are generic and claim 28 is directed to the elected species, namely, the design of Figures 1-9 which 'includes a downwardly projecting pedestal portion adapted to support said sign relative to a supporting surface'." In the subsequent action of December 6, 2005, the Examiner rejected claims 1 through 22, 27 and 28 and "claim(s) 23-26, 29-52 is/are withdrawn from consideration."

In the Amendment of January 26, 2006, the undersigned amended claim 1 by inserting therein selected subject matter of cancelled claims 4 through 7.

Claim 20 was amended by inserting therein the subject matter of cancelled claim 23.

Claim 30 was amended by calling for the side members each being an individual tube.

Thus, prior to the Office Action of April 20, 2006, the claims of record remained the claims elected and generic and with only claim 28 being directed to the "pedestal" species of Figures 1-9.

Simply stated, the prosecution to date prior to the April 20, 2006 Office Action was directed to (1) a species **identified** by the Examiner as the **species** of Figures 1-9, (2) the latter was elected for prosecution by the undersigned and (3) claims have been presented thereto.

In the April 20, 2006 Office Action the Examiner identifies as pending in the application, claims 1 through 3, 9, 10, 12-21 and 24-56 and now states: "This application contains claims directed to the following patentably distinct species," followed by a description of two different signs and certainly two signs which have nothing in common to the specifically first described three species so identified by the Examiner and the species elected by Applicant.

At page 2 of the present Office Action, the Examiner describes as presumably species "I. A sign having side members made of tubes in telescoping relationship with the upper and lower members." The latter description defines and describes **every sign** disclosed and claimed in the present application!

With respect to the other described distinct species, presumably "II," this distinct species is said to be "A sign having means filing and rigidifying the border." From a disclosure standpoint, the latter-described species also finds counterpart structure in each of the originally described species of Figures 1 through 9, Figures 10 - 11 and Figures 12 through 14!

With due respect, the undersigned vigorously traverses this latest restriction/election requirement because the two "new" species are not even a species in the sense contemplated by the statute and neither species is based upon **claimed** subject matter. Species and an election requirement with respect thereto must be based upon **claims**, not disclosure!

Furthermore, the Examiner had originally required an election between three different species, the undersigned elected the species of Figures 1-9, and now some other alleged species finds its way into the record unsupported by reason or fact. As an example of the latter, the Examiner states: "The species are independent or distinct because a sign cannot have both telescoping members and a filled border." **Why not?** Applicant's specification so states. Paragraph [0034] states: "The hollow side members or columns 14, 15 preferably are not filled with urethane foam because these are rigidified by the legs 64', 65' and 93' telescoped internally therein (Figure 1). However, central areas of the hollow columns 14, 15 can be filled with urethane foam so long as the upper and lower ends of each of the hollow columns 14, 15 are left open for receipt of and frictional gripping engagement with the legs 64', 65' and 93'."

Obviously, the columns 14, 15 are telescoped into the upper and lower hollow members which are also filled with polyurethane foam (paragraph [0031]). Therefore, a sign not only can have both telescoping members and a filled border, but applicant's sign can and does have both and can and is so claimed!

Therefore, with all due respect, this first reason given by the Examiner in support of the alleged restriction requirement is totally bogus!

The Examiner next states at page 2, paragraph 4: "Also, it is not clear at this time how the individual tubes have free upper and lower ends (claim 1) if they are engaged with the upper and lower members." The word "free" has many meanings and is used in the normal structural manner intended "not fastened (~ the end of the rope)." [See Merriam Webster's Collegiate

Dictionary, Tenth Edition.) Thus, the upper and lower ends are not only "free" but they also "are engaged with the upper and lower members."

If the Examiner is really serious with respect to the restriction requirement and chooses not to withdraw the same, the undersigned herewith elects for prosecution before the Examiner the species identified by the Examiner as "I. A sign having side members made of tubes in telescoping relationship with the upper and lower members."

All of the claims of record, including the claims added by this amendment are readable upon the elected species.

In view of the foregoing, formal examination of all of the claims of record and the allowance of each claim is herewith respectfully requested.

Respectfully submitted,

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